

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO. 4:10-CR-62-FL-1
NO. 4:14-CV-10-FL

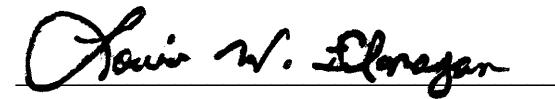
JEFFREY WAYNE SCOTT,)
)
Petitioner,)
)
v.) ORDER
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

Petitioner filed a motion to vacate under 28 U.S.C. § 2255 on January 15, 2014 (DE 58). The filing did not substantially follow the form appended to the Rules governing § 2255 Proceedings and on January 15, 2014, petitioner was directed to complete the correct form and return within fourteen days. Petitioner failed to comply with the court's January 15, 2014, order and on February 10, 2014, the court entered an order to show cause why the action should not be dismissed for failure to prosecute. On March 3, 2014, the court received a letter from petitioner stating that he no longer wished to pursue his motion to vacate under 28 U.S.C. § 2255. The letter has been docketed as a motion to voluntarily dismiss (DE 61).

An action may be dismissed voluntarily by the plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the plaintiff's request except upon an order of the court. See Fed. R.Civ. P. 41(a)(2).

In this case, the adverse party has not yet filed an answer or a motion for summary judgment; therefore, dismissal is proper. Accordingly, petitioner's motion for voluntary dismissal is GRANTED, and this action and the § 2255 motion is DISMISSED.

SO ORDERED, this the 3rd day of March, 2014.


LOUISE W. FLANAGAN
United States District Judge